

## **DETAILED ACTION**

### **Status of Claims**

1. The following is a **Final Office Action** in response to Applicant's amendment received 11/23/2010.
2. In accordance with Applicant's amendment, claims 1, 2, 7, 16, 18, 21, 24, 28, and 34-49 are amended. Claims 23 and 50-52 are cancelled. Claims 53-56 are added as new claims, however are withdrawn from consideration for being drawn to a non-elected invention, as set forth below. Claims 1-22, 24-49, and 53-56 are currently pending.

### **Election/Restriction**

3. Newly submitted claims 53-56 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The originally filed claims, Invention I, are drawn to methods (claims 1-33 and 50-52) and an apparatus (claims 34-49) for optimizing performance. In the amendment filed 11/23/2010, newly submitted claims 53-56, Invention II, are drawn to a method for online personal assessment. These inventions are distinct, each from the other because:

Inventions I and II are related as subcombinations disclosed as usable together as a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, Invention I is a method/system for optimizing performance. Invention II is a method for online personal assessment. Invention I has separate utility such as for optimizing organizational performance. Invention II has separate utility such as for generating personal assessments based on unstructured responses to personal queries (open ended question responses). See MPEP § 806.05(d).

Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and/or examination burden if restriction were not required because at least the following reason(s) apply: With respect to Inventions I and II, there would be a serious search and/or examination burden because the inventions require a different field of search (for example, searching different classes/subclasses or

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electronic resources, or employing different search queries) based at least on one or more distinct features of each invention as follows: Invention I includes the distinct features of at least the following: *creating an action plan for said first individual and said second individual* (claims 1 and 34), *compiling results of said at least one questionnaire* (claims 1 and 34), and *displaying said results of said at least one questionnaire* (claims 1 and 34). Invention II includes the distinct features of at least the following: *questionnaire plurality of open-ended questions* (claim 53), *first and second customized online tools* (claim 53), *plurality of questions is selected from the group consisting of company, rewards, work, and people* (claim 56). Each of the foregoing distinct features will require different search queries and thus presents a serious search and/or examination burden if restriction were not required. Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Since applicant has received an action on the merits for the originally presented invention, this invention (Invention I) has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 53-56 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

#### **Response to Amendment**

4. Applicant's amendment necessitated the new ground(s) of rejection set forth in this Office Action.
5. The 35 U.S.C. §112 rejection of claims 34-49 set forth in the previous office action is withdrawn in response to applicant's amendment.
6. The 35 U.S.C. §101 rejection of claims 1-33 and 50-52 set forth in the previous office action is withdrawn in response to applicant's amendment.

#### **Response to Arguments**

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7. Official Notice/Admitted Prior Art (APA): It is noted that the applicant did not challenge the officially noticed facts set forth in the previous office action (See pgs. 19-22 of non-final rejection mailed 12/16/2009). Accordingly, the officially noticed facts set forth in the previous office action are hereafter deemed as Admitted Prior Art (APA). Specifically, it has been established that, at the time of applicant's invention, the following features were old and well known in the art: 1) *varying displayed survey results depending on the viewer* (e.g., displaying results relative to a corresponding organizational unit, management position, etc.); 2) *providing recommendations (e.g., suggestions, help, tools) for improving individual performance based on information extracted from a survey, and such tools (assessments, aptitude batteries, etc.) have long been employed by institutions, organizations, and the like*; 3) *taking steps aimed toward improving team performance, including areas such as team cohesion (e.g., engagement and alignment) and team productivity, based on information extracted from surveys and often employed for the purpose of evaluating the performance of a team and its contribution to an organization*; and 4) *administering a survey to members of an organization and taking steps or making changes aimed toward across-the-board organizational improvement, including employee and management performance improvement based on information extracted from surveys*.

8. Applicant's arguments with respect to the 35 U.S.C. §103(a) rejection of the claims have been considered but are moot in view of the new ground(s) of rejection.

#### **Claim Rejections - 35 USC § 112**

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. **Claims 1-22 and 24-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

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**11.** Claim 1 recites the limitation "said at least one online questionnaire." There is insufficient antecedent basis for this limitation in the claim because claim 1 does not introduce, refer to, or inherently disclose an "online questionnaire" prior to referring to "said at least one online questionnaire." Appropriate correction is required.

Claims 2-22 and 24-33 depend from claim 1 (directly or indirectly) and fail to cure the deficiency of claim 1 under §112, second paragraph, and are therefore rejected based on their dependency from an indefinite base claim.

### **Claim Rejections - 35 USC § 103**

**12.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**13. Claims 1-15, 17, 18, 21, 28-47, and 49 are rejected under 35 U.S.C. 103(a) as unpatentable over Challey et al. (US 2004/0128183, hereafter referred to as "Challey") in view of Ammerman et al. (US 2003/0115094, hereafter referred to as "Ammerman") in view of Bubner (US 2004/0054567).**

**14. Claims 1 and 34:**

As per claim 1, Challey teaches a method for optimizing performance in an organization comprising:

- *storing information regarding a plurality of individuals in at least one database* (paragraph 74: server 104 or survey application may maintain the list of people indicated in the box 374 or may import or retrieve the invitee data from other applications, databases, sources, etc; application, device or party also may maintain contact information (e.g., email addresses, facsimile numbers) for the people in the groups indicated in the box 372. As shown by this example, in some embodiments, the survey generating application

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operating on the server 104 may be able to access other information maintained in or by different sources, applications, databases, etc);

- *receiving information regarding a first request to access at least one questionnaire from a first computer associated with a first individual, wherein said at least one questionnaire contains information regarding at least one question* (paragraph 10: providing data indicative of a request to the approver to review the survey; providing an invitation to the invitee to take the survey, the invitation including data indicative of a location of the survey; and allowing access by the invitee to the survey at the location; paragraph 11: survey includes at least one question; paragraphs 46-47: disclose the user or client computing devices allowing user to interact with the server [i.e., for receiving survey and sending response(s)]);
- *determining with a processor* (use of a “processor” for carrying out the invention is disclosed in at least paragraphs 11, 144, 147-149, 151-152, 170, and Fig. 25) *whether said individual is authorized to access said at least one questionnaire* (determining authorization is implicitly taught by the step for allowing access by the invitee, since “allowing” implies, necessitates, or requires a determination of consent, authorization, permission, etc.; See paragraph 10); *providing access to said at least one online questionnaire upon a positive authorization of said first individual* (paragraph 10: allowing access by the first invitee to the first survey);
- *providing, via said processor* (use of a “processor” for carrying out the invention is disclosed in at least paragraphs 11, 144, 147-149, 151-152, 170, and Fig. 25), *a plurality of questions to said first individual* (paragraph 10: survey includes at least one question; receiving information usable with the at least one question in the survey; generating the survey using the template and the information; and allowing access by a designated invitee to the survey);
- *transmitting, via said first computer, information regarding a first response to said at least one questionnaire; storing information regarding said first response in said at least one*

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*database* (paragraph 4: the survey application may store surveys and results from the surveys in a single table or other central location to facilitate and control access to and security of the surveys and results; paragraphs 10-11: storing results of the first survey and the second survey in a central location; paragraphs 48-49: disclose the various transmission means for communicating the survey data between computing devices, e.g., the server and client devices);

- *transmitting information regarding a second request to access at least one questionnaire from a second computer associated with a second individual, wherein said at least one questionnaire contains information regarding at least one question* (paragraph 10: the second survey having an associated second invitee; paragraph 11: survey includes at least one question; paragraphs 46-47: disclose the user or client computing devices allowing user to interact with the server [i.e., for receiving survey and sending response(s)]);
- *determining with a processor* (use of a “processor” for carrying out the invention is disclosed in at least paragraphs 11, 144, 147-149, 151-152, 170, and Fig. 25) *whether said second individual is authorized to access said at least one questionnaire* (determining authorization is implicitly taught by the step for allowing access by the invitee, since “allowing” implies, necessitates, or requires a determination of consent, authorization, permission, etc.; See paragraph 10); *providing access to said at least one online questionnaire upon a positive authorization of said second individual* (paragraph 10: providing an invitation to the second invitee to take the second survey, the invitation including data indicative of a location associated with the second survey; allowing access by the second invitee to the second survey; and storing results of the first survey and the second survey in a central location);
- *providing, via said processor, a plurality of questions to said second individual* (paragraph 10: survey includes at least one question; receiving information usable with the at least one question in the survey; generating the survey using the template and the information;

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and allowing access by a designated invitee to the survey; allowing access by the second invitee to the second survey; and storing results of the first survey and the second survey in a central location),

- *transmitting, via said second computer, information regarding a second response to said at least one questionnaire; storing information regarding said second response in said at least one database* (paragraph 4: the survey application may store surveys and results from the surveys in a single table or other central location to facilitate and control access to and security of the surveys and results; paragraphs 10-11: storing results of the first survey and the second survey in a central location; paragraphs 48-49: disclose the various transmission means for communicating the survey data between computing devices, e.g., the server and client devices);
- *compiling results of said at least one questionnaire into said at least one database* (paragraph 4: survey application may store surveys and results from the surveys in a single table or other central location to facilitate and control access to and security of the surveys and results; See also, paragraphs 7, 10, 11, 43, 80, and 122);
- *displaying said results of said at least one questionnaire* (paragraph 42: user device 108 that may enable a user to receive or access the results of a survey or a report created from the results of a survey; See also, paragraphs 43-44: e.g., provides a window, interface or dashboard for real time access to survey results).

Challey does not teach the following limitations:

- *wherein said plurality of questions is customized based on an organizational level of said first individual in said organization;*
- *wherein said plurality of questions is customized based on said organizational level of said second individual in said organization;*
- *analyzing, via said processor, said results for said optimizing; and*
- *creating, via said processor, an action plan for said first individual and said second individual.*

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However, Ammerman teaches the limitations of *analyzing, via a processor* (paragraphs 32, 37, and Fig. 1: processor), *results for optimizing* (paragraph 37: apparatus 10 can be hardwired or provided with software to enable processor 18 to analyze the cumulative evaluation data entered into apparatus 10 and stored in data storage device; paragraph 98: Identifying specific behaviors the need developed for effective job performance can generate an action plan for the employee. These behaviors are identified like any other and placed within the software protocol for observation and tracking. The action plan to also be identified from a variety of behaviors scored at 3.0 or less than are slated for development and improvement or is new competencies and need be learned by all and are tracked using the same process); and *creating, via a processor* (paragraphs 32, 37, and Fig. 1: processor), *an action plan for individuals* (paragraphs 32 and 98: action plan for the employee).

It would have been obvious to one of ordinary skill in the art to combine Challey and Ammerman in order to provide the benefit of improved organizational performance through application of the survey results to areas of potential improvement via implementation of effective action plans via the use of consistent, behavior-based analysis of the people within the organization, providing the clearest indicators as to where and how an organization must proceed and be more effective with its people, its mission, its customers, and its future (Ammerman at paragraph 90); and further obvious because the claimed invention is merely a combination of old elements (The “old elements” comprise: known computing devices, administration of employee surveys, evaluation of the surveys, and application of the survey results for employee and organizational improvement), and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable (The “predictable result” is the generation of individual improvement plans (e.g., performance goals) based on the pertinent data collected from individual surveys).

Challey and Ammerman do not teach the following limitations:

- *wherein said plurality of questions is customized based on an organizational level of said first individual in said organization;*



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- *wherein said plurality of questions is customized based on said organizational level of said second individual in said organization.*

However, Bubner teaches the limitations *wherein said plurality of questions is customized based on an organizational level of a first/second individual in an organization* (paragraph 54: questions are written for senior managers. Other questions are written so that they can be answered by any employee).

It would have been obvious to one of ordinary skill in the art to combine Challey/Ammerman with features for customizing questions according to individuals' organizational levels in order to provide the benefit of targeted survey administration according to roles, thus enhancing the ability to conduct behavior-based analysis of the people within the organization, providing the clearest indicators as to where and how an organization must proceed and be more effective with its people, its mission, its customers, and its future (Ammerman at paragraph 90); and further obvious because the claimed invention is merely a combination of old elements (The "old elements" comprise: known computing devices, administration of employee surveys, evaluation of the surveys, targeted questions based on organizational role, and application of the survey results for employee and organizational improvement), and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable (The "predictable result" is the generation of individual improvement plans (e.g., performance goals) based on the pertinent data collected from individual surveys).

Claim 34 is drawn to a system for carrying out the method recited in claim 1. Accordingly, Challey, in view of Ammerman and Bubner, teaches a system for carrying out the invention (paragraphs 11, 41-42, and Figures 1-2), and therefore claim 34 is rejected for substantially the same reasons as set forth above.

**15. Claim 2:** Challey, in view of Ammerman and Bubner, further teaches *wherein each of first request and said second request are received over at least one network* (Challey at paragraph 45: server 104 may implement or host a Web site, corporate intranet, or other electronic resource, which may be accessible via an intranet, the World Wide Web, or other communications network; See also, paragraphs 46, 48, 49, 144, 155, and Figure 2, element 130).

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**16. Claim 3:** Challey, in view of Ammerman and Bubner, further teaches *wherein said network is selected from the group consisting of (i.e., at least one of) an internet, an intranet, a wireless network, a cellular network, a wide area network, a local area network, a virtual private network, a token ring network, and a dial-up network* (Challey at paragraphs 45-46 and 48-49).

**17. Claims 4/42:** Challey, in view of Ammerman and Bubner, further teaches *further comprising the step of chronologically tracking the progress of said results* (Challey at paragraph 161: single table in which additional results are appended as they are received).

**18. Claims 5/43:** Challey, in view of Ammerman and Bubner, further teaches *further comprising the step of displaying said results in real-time* (Challey at paragraph 44: user device 120 may operate or access the window, interface or dashboard in order to enable a user to view survey results in real or near real time).

**19. Claims 6/44:** Challey, in view of Ammerman and Bubner, further teaches *wherein said results are displayed online* (Challey at paragraph 124).

**20. Claims 7/45:** Challey, in view of Ammerman and Bubner, further teaches *wherein at least part of said results of said individual are displayed to at least one person other than said individual* (Challey at paragraph 140: different people may be allowed different privileges based on a role assigned; manager may be able to see the results of all surveys created by employees in his or her department; people having different roles may have different limits on survey results they can obtain or view; See also, paragraph 139).

**21. Claim 8:** Challey, in view of Ammerman and Bubner, further teaches *wherein said results displayed vary depending on the person viewing said results* (Challey at paragraphs 139-140).

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**22. Claim 9:** Challey, in view of Ammerman and Bubner, further teaches *wherein said at least one database requires authorized access* (Challey at paragraphs 139-140: level of access for one or more users is created by administrator).

**23. Claim 10:** Challey, in view of Ammerman and Bubner, further teaches *wherein at least part of said results is sorted* (Challey at paragraphs 139 and 141: e.g., user may be able to see only results/reports of the surveys the user has created; may remove test responses, bad data, offensive language, etc., from survey results and reports; may include a button or other functionality that allows the superuser to delete some or all of the results of the report).

**24. Claim 11:** In the combination of Challey/Ammerman/Bubner, Ammerman further teaches *wherein at least part of said results is statistically analyzed* (Ammerman at paragraphs 87-107: e.g., Analysis of the Data Collected; software creates statistically sound reports that are aggregated over time and creates comparison reports; statistical average reliability factor). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to further include a feature for statistically analyzing the results, as taught by Ammerman, in order to provide the benefit of, for example, identifying trends or patterns, make comparisons, identify significant findings in accordance with conventional and predictable statistical analysis methods known in the art.

**25. Claim 12:** Challey, in view of Ammerman and Bubner, further teaches *wherein at least part of said results is summarized* (Challey at paragraphs 124 and 130: summary results for the designated survey).

**26. Claim 13:** Challey, in view of Ammerman and Bubner, further teaches *further comprising the step of quantitatively analyzing said results* (Challey at paragraph 130).

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**27. Claim 14:** Challey, in view of Ammerman and Bubner, further teaches *further comprising the step of qualitatively analyzing said results* (Challey at paragraphs 62, 95, 98: discloses features for validating survey responses, which is the equivalent of qualitative analysis of responses/results).

**28. Claims 15/46:** Challey, in view of Ammerman and Bubner, further teaches *wherein said questionnaire comprises at least one question, said question being in a format selected from the group consisting of (i.e., at least one of) multiple-choice, ranking, and written answer* (Challey at paragraph 111: multiple choice; See also, paragraph 130: rating/ranking).

**29. Claim 17:** In the combination of Challey/Ammerman/Bubner, Ammerman further teaches *wherein said performance comprises individual performance* (Ammerman at paragraphs 5, 32, and 37).

Furthermore, conducting surveys for the end purpose of rating, critiquing, or improving individual performance is old and well known. It would have been obvious to one of ordinary skill in the art to apply the combined teachings of Challey/Ammerman/Bubner to optimize individual performance, as taught by Ammerman, in order to provide the benefit of improved individual performance through application of the results to areas of potential improvement for individuals, and further obvious because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that optimizing an individual's performance based on findings from a questionnaire, survey, or the like, was predictable.

**30. Claim 18:** In the combination of Challey/Ammerman/Bubner, Ammerman further teaches *wherein said performance comprises performance for the organization* (paragraph 20: The organization then uses these measures to govern change when the measures that are selected are not truly an indication of their effectiveness as a group, team or organization; See also, paragraphs 32 and 37). Furthermore, conducting surveys for the end purpose of rating, critiquing, or improving organizational performance is old and well known. It would have been obvious to one of ordinary skill in the art to apply the combined

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teachings of Challey/Ammerman/Bubner to optimize organizational performance, as taught by Ammerman, in order to provide the benefit of improved organizational performance through application of the results to areas of potential improvement for an organization, and further obvious because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that optimizing an organization's performance based on findings from a questionnaire, survey, or the like, was predictable.

**31. Claim 21:** In the combination of Challey/Ammerman/Bubner, Ammerman further teaches *wherein each of said first and said second individuals is a member of an organization* (paragraphs 5, 22, 32, 37). It would have been obvious to one of ordinary skill in the art to further include a feature wherein the individual is a member of an organization, as taught by Ammerman, in order to provide the benefit of improved organizational performance through application of survey results in pursuit of identifying areas in need of improvement as identified by the members, and further obvious because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

**32. Claim 28:** Challey, in view of Ammerman and Bubner, further teaches *wherein said questionnaire comprises questions on topics selected from the group consisting of (at least one of) self appraisal, appraisal of said organization, project goals, customer service, work environment, leadership, communication, educational programs, personal goals, ideas, perspectives, feedback, and relationships* (paragraphs 2 and 8: ideas; customer service). Furthermore, recitation of particular types of questions in the language of the claims fails to distinguish the claimed invention from the prior art in terms of patentability because such language fails to positively recite structure and/or functionality and is reasonably construed as non-functional descriptive material and/or a statement of intended use and thus fails to distinguish the claimed invention from the prior art in terms of patentability. See *In re Gulack*, 703

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F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)).

**33. Claims 29/49:** Challey, in view of Ammerman and Bubner, further teaches *wherein at least part of said results of said member are displayed in a format containing at least one of a category, importance, score, gap, and comments* (Challey at paragraph 130: comments).

**34. Claim 30:** In the combination of Challey/Ammerman/Bubner, Ammerman further teaches *wherein said optimizing comprises the step of improving said individual's work environment* (at least implicitly in paragraph 36). It would have been obvious to one of ordinary skill in the art to further include a feature wherein the optimizing includes improving an individual's work environment, as taught by Ammerman, in order to provide the benefit of improved organizational performance through application of survey results in pursuit of identifying areas in need of improvement as identified by the members, and further obvious because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

**35. Claim 31:** Challey, in view of Ammerman and Bubner, further teaches *wherein said optimizing comprises the step of creating a shared view* (paragraphs 80, 133, and 134).

**36. Claim 32:** Challey, in view of Ammerman and Bubner, further teaches *wherein said optimizing comprises the step of obtaining feedback* (paragraph 130: survey takers may provide comments).

**37. Claim 33:** Regarding the limitation of *wherein said performance comprises the performance of a "virtual enterprise", wherein said organization is part of said "virtual enterprise,"* referencing performance of a virtual enterprise as the organization of interest merely states an intended use of the invention, and furthermore the underlying functionality would be executed in an identical or at least substantially similar

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manner wherein the organization happens to be a “virtual enterprise” since a virtual enterprise is merely an abstraction for an association between entities for a common purpose (i.e., an organization). Furthermore, it would have been obvious to one of ordinary skill in the art to apply the combination to the optimization of a virtual enterprise in order to apply survey results to improve the cohesion, performance, or alignment of the virtual enterprise, and further obvious because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

**38. Claim 35:** Challey, in view of Ammerman and Bubner, further teaches *wherein said processor grants access to said results depending on the person accessing said results* (Challey at paragraphs 139-140: discloses role-based access levels for users).

**39. Claim 36:** Challey, in view of Ammerman and Bubner, further teaches *further comprising a connection device for connecting said each of said first and said second user computers to a network* (Challey at paragraphs 45, 46, 48, 49, 144, 155, and Figure 2, element 130).

**40. Claim 37:** Challey, in view of Ammerman and Bubner, further teaches *wherein said connection device is selected from the group consisting of* (i.e., at least one of) *internet connection, intranet connection, cable modem, fax modem, DSL modem, coaxial cable, and telephone line* (Challey at paragraphs 45, 46, 48, 49, 144, 155, and Figure 2, element 130).

**41. Claim 38:** Challey, in view of Ammerman and Bubner, further teaches *wherein said at least one questionnaire and said at least one database are connected by said network* (paragraph 46 and Figures 1-2).

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**42. Claim 39:** Challey, in view of Ammerman and Bubner, further teaches *wherein said connection device is selected from the group consisting of* (i.e., at least one of) *internet connection router, intranet connection router, cable modem, fax modem, DSL modem, cellular modem, coaxial cable, and telephone line* (Challey at paragraphs 46, 49, and 155).

**43. Claim 40:** Challey, in view of Ammerman and Bubner, further teaches *further comprising a display for displaying at least part of said results* (Challey at paragraphs 44, 125, 128, 161, 164, and Figures 18 and 20).

**44. Claim 41:** In the combination of Challey/Ammerman/Bubner, Ammerman further teaches *further comprising statistical analysis software embedded in database non-transitory storage device for statistically analyzing at least part of said results* (Ammerman at paragraphs 87-107: e.g., Analysis of the Data Collected; software creates statistically sound reports that are aggregated over time and creates comparison reports; statistical average reliability factor). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to further include software for statistically analyzing the results, as taught by Ammerman, in order to provide the benefit of, for example, identifying trends or patterns, make comparisons, identify significant findings in accordance with conventional and predictable statistical analysis methods known in the art.

**45. Claim 47:** In the combination of Challey/Ammerman/Bubner, Bubner further teaches *wherein said at least one questionnaire is customized for each of said plurality of individuals* (paragraph 54: questions are written for senior managers. Other questions are written so that they can be answered by any employee).

It would have been obvious to one of ordinary skill in the art to include Bubner's features for customizing questions according to individuals' organizational levels in order to provide the benefit of targeted survey administration according to roles, thus enhancing the ability to conduct behavior-based analysis of the people within the organization, providing the clearest indicators as to where and how an



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organization must proceed and be more effective with its people, its mission, its customers, and its future (Ammerman at paragraph 90); and further obvious because the claimed invention is merely a combination of old elements (The “old elements” comprise: known computing devices, administration of employee surveys, evaluation of the surveys, targeted questions based on organizational role, and application of the survey results for employee and organizational improvement), and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable (The “predictable result” is the generation of individual improvement plans (e.g., performance goals) based on the pertinent data collected from individual surveys).

**46. Claims 16, 19, 20, and 25 are rejected under 35 U.S.C. 103(a) as unpatentable over Challey et al. (US 2004/0128183, hereafter referred to as “Challey”) in view of Ammerman et al. (US 2003/0115094, hereafter referred to as “Ammerman”) in view of Bubner (US 2004/0054567), as applied to claims 1 and 21 above, in further view of Admitted Prior Art.**

**47. Claim 16:** Challey, in view of Ammerman and Bubner, teaches the limitations of claim 1 as set forth above. Challey/Ammerman/Bubner do not expressly teach the limitation of *providing each of said first and said second individuals with suggestions, help or tools for improvement* (i.e., at least one of the listed elements). However, as per Admitted Prior Art, providing recommendations (e.g., suggestions, help, tools) for improving individual performance based on information extracted from a survey is old and well known in the art, and such tools (assessments, aptitude batteries, etc.) have long been employed by institutions, organizations, and the like, and it would have been obvious to one skilled in the art to provide suggestions, help, or tools for improvement in furtherance of optimizing performance based on the difference between a desired state of performance and the performance as measured by the results from the questionnaire. Furthermore, merely adding a step for providing and individual with suggestions, help or tools for improvement would have been obvious because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the

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same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

**48. Claims 19/20:** Challey, in view of Ammerman and Bubner, teaches the limitations of claim 1 as set forth above. Challey/Ammerman/Bubner do not expressly teach the limitations of *wherein said performance comprises team performance* (claim 19) and *wherein said team performance comprises at least one selected from the group consisting of innovation, engagement, alignment, productivity, and collaboration* (claim 20). However, as per Admitted Prior Art, taking steps aimed toward improving team performance, including areas such as team cohesion (i.e., engagement and alignment) and team productivity based on information extracted from surveys is old and well known in the art, often employed for the purpose of evaluating the performance of a team and its contribution to the organization, and thus would have been obvious because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable (i.e., survey used to enhance conventional performance attributes of a team).

**49. Claim 25:** Challey, in view of Ammerman and Bubner, teaches the limitations of claim 1 as set forth above. Challey/Ammerman/Bubner do not expressly teach the limitation of *wherein said performance comprises employee and management performance within said organization*. However, as per Admitted Prior Art, administering a survey to members of an organization and taking steps or making changes aimed toward across-the-board organizational improvement, including employee and management performance improvement, based on information extracted from surveys is old and well known in the art, and such an application of the invention would have been obvious to provide the benefit of addressing employee/management performance improvement to ultimately optimize organizational performance; and further obvious because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

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**50. Claims 22 and 48 are rejected under 35 U.S.C. 103(a) as unpatentable over Challey et al. (US 2004/0128183, hereafter referred to as "Challey") in view of Ammerman et al. (US 2003/0115094, hereafter referred to as "Ammerman") in view of Bubner (US 2004/0054567), as applied to claims 21 and 34 above, in further view of Nanos et al. (US 2001/0052122).**

**51. Claims 22/48:** Challey, in view of Ammerman and Bubner, teaches the limitations of claims 21/34 as set forth above. Challey/Ammerman/Bubner do not expressly teach the limitation *wherein said at least one questionnaire is customized for said organization*.

However, Nanos teaches *wherein said at least one questionnaire is customized for said organization* (paragraph 95) in analogous art of market research and data collection systems. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to combine the questionnaire customization feature, as taught by Nanos, with the teachings of Challey/Ammerman/Bubner in order to provide the benefit of customized surveys to meet special site needs (Nanos at paragraph 95).

**52. Claim 24 is rejected under 35 U.S.C. 103(a) as unpatentable over Challey et al. (US 2004/0128183, hereafter referred to as "Challey") in view of Ammerman et al. (US 2003/0115094, hereafter referred to as "Ammerman") in view of Bubner (US 2004/0054567), as applied to claim 1 above, in further view of Loya (US 2002/0035506).**

**53. Claim 24:** Challey, in view of Ammerman and Bubner, teaches the limitations of claim 21 as set forth above. Challey/Ammerman/Bubner do not expressly teach the limitation *further comprising the step of determining the gap between at least said first individual's desired state and at least first individual's actual state*.

However, Loya teaches *determining the gap between at least said first individual's desired state and at least first individual's actual state* (paragraph 15: Goal attainment is measured by comparing actual periodic results to the set goals) in analogous art of employee incentive and compensation design. It

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would have been obvious to one of ordinary skill in the art, at the time of the invention, to combine the gap determination feature, as taught by Loya, with the teachings of Challey/Ammerman/Bubner in order to provide the benefit of identifying areas to be targeted for improvement, for setting future goals, or to recognize achievement of a desired state (i.e., zero gap).

**54. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as unpatentable over Challey et al. (US 2004/0128183, hereafter referred to as "Challey") in view of Ammerman et al. (US 2003/0115094, hereafter referred to as "Ammerman") in view of Bubner (US 2004/0054567), as applied to claim 21 above, in further view of MacKenzie (US 2002/0065709).**

**55. Claims 26/27:** Challey, in view of Ammerman and Bubner, teaches the limitations of claim 21 as set forth above. Challey/Ammerman/Bubner do not expressly teach the limitation *further comprising the step of displaying at least part of said results to at least one member of a different organization*.

However, MacKenzie teaches the step of *displaying at least a part of said results to at least one member of a different organization* (paragraph 154: client, working with the consultant, selects final recommendations for taking action to improve the results and the organization).

It would have been obvious to one of ordinary skill in the art to combine Challey/Ammerman/Bubner with MacKenzie's feature displaying results to at least one member of a different organization in order to provide the benefit of enhanced survey analysis by employing the services of an unbiased party (i.e., consultant, specialist, troubleshooter) for explaining and/or applying aid results in accordance with organizational needs and expectations, and further obvious because the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 27, which recites *wherein said organization is part of a "virtual enterprise,"* the examiner notes that the combination of Challey/Ammerman/Bubner/MacKenzie already teaches the functional limitations for performing the invention of claim 27 since claim 27 merely states an intended use of the

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invention and furthermore would operate in an identical or at least substantially similar manner wherein the organization happens to be a "virtual enterprise" since a virtual enterprise is merely an abstraction for an association between entities for a common purpose (i.e., an organization). Further, it is noted that virtual enterprises are old and well known in the art, and applying the claimed features to a virtual enterprise is an obvious application for the invention with no new or unexpected result being associated therewith. Thus, claim 27 recites no additional functional or structural limitations beyond those already addressed and is therefore rejected using the same art and same or substantially similar reasons set forth above.

### Conclusion

**56.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Kim (Pub. No.: US 2005/0075919) teaches a method/system for real time respondent based surveying (paragraph 8) suitable for conducting employee-satisfaction surveys (paragraph 2).
- Brookler et al. (Pub. No.: US 2002/0007303) teaches a system for conducting electronic surveys including a survey results analysis engine (paragraphs 30-31,64-65) and anonymity functionality (paragraphs 62-63).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

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advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to Timothy A. Padot whose telephone number is 571.270.1252. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Lynda Jasmin can be reached at 571.272.6782.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866.217.9197 (toll-free).

Any response to this action should be mailed to:

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TIMOTHY PADOT

Examiner, Art Unit 3624

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/Romain Jeanty/

Primary Examiner, Art Unit 3624